

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

Customs Bulletin

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NOTICE

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U.S. Customs Service

(T.D. 74-137)

Tuna Fish—Tariff-rate quota

The tariff-rate quota for the calendar year 1974 on tuna classifiable under item 112.30, Tariff Schedules of the United States

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 23, 1974.

It has now been determined that 112,175,689 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the calendar year 1974 at the rate of 6 per centum ad valorem under item 112.30, Tariff Schedules of the United States. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 per centum ad valorem under item 112.34 of the tariff schedules.

Pursuant to the provisions of item 112.30, Tariff Schedules of the United States, the above quota is based on the United States pack of canned tuna during the calendar year 1973.

(QUO-2-0)

VERNON D. ACREE,
Commissioner of Customs.

[Published in the Federal Register May 1, 1974 (39 FR 15149)]

(T.D. 74-138)

Bonded Carriers

Approval and discontinuance of carrier bonds, Customs Form 3587

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 25, 1974.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indi-

cates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Arcticare Transport, Inc., 47 East St., Rockville, Conn., motor carrier; The Continental Ins. Co.	Feb. 15, 1974	Apr. 10, 1974	Bridgeport, Conn.; \$25,000
Artec Transportation Co., 2548 Commercial St., San Diego, Calif., motor carrier; Insurance Co. of N. America (PB 11/19/71) D 4/8/74 ¹	Mar. 27, 1974	Apr. 10, 1974	San Diego, Calif.; \$25,000
Bestway Transport, 3841 N. Columbia Blvd., Portland, Ore., motor carrier; St. Paul Fire & Marine Ins. Co.	Feb. 8, 1974	Apr. 9, 1974	Portland, Ore.; \$25,000
Buckeye Air Service, Inc., 613 Oberlin Rd., Elyria, Ohio, air carrier; St. Paul Fire & Marine Ins. Co. D 4/3/74	Oct. 30, 1970	Nov. 2, 1970	Cleveland, Ohio; \$25,000
Coastal Transport Co., Inc., P.O.B. 22592, Houston, Tex., motor carrier; The Home Indemnity Co.	Feb. 12, 1974	Apr. 8, 1974	Houston, Tex.; \$25,000
Dallas Carriers Corp., P.O.B. 7024, Dallas, Tex., motor carrier; Argonaut Ins. Co.	Nov. 6, 1973	Apr. 12, 1974	Houston, Tex.; \$25,000
Dealers Transit, Inc., 2200 E. 17th St., Lansing, Ill., motor carrier; Liberty Mutual Ins. Co. (PB 8/30/68) D 3/6/74 ²	Mar. 6, 1974	Mar. 11, 1974	Tampa, Fla.; \$50,000
Ehrlich Transport Ltd. and/or Transport Des Roches Ltee., 3250 Derry Rd. E., Mississauga, Ontario, Canada, motor carrier; Hartford Fire Ins. Co. (PB 7/19/72) D 4/1/74	Feb. 8, 1974	Apr. 1, 1974	Buffalo, N.Y.; \$25,000
Max L. Fairchild dba Max Fairchild Trucking, P.O.B. 65, Hamilton, Mont., motor carrier; Safeco Ins. Co. of America D 3/28/74	Feb. 23, 1973	Mar. 23, 1973	Great Falls, Mont.; \$25,000
Great Western Unifreight System, 17000 Santa Fe Ave., Compton, Calif., motor carrier; Peerless Ins. Co. (PB 3/28/72) D 3/27/74 ³	Mar. 1, 1974	Mar. 27, 1974	Los Angeles, Calif.; \$50,000
Illinois-California Express, Inc., 510 E. 51st Ave., Denver, Colo., motor carrier; Lumbermen's Mutual Casualty Co. (PB 3/25/69) D 3/24/74 ⁴	Jan. 30, 1974	Mar. 25, 1974	El Paso, Tex.; \$25,000
Inter State Express, Inc., 5773 S. Prince St., Littleton, Colo., freight forwarder; Transport Indemnity Co. (PB 9/5/70) D 3/4/74 ⁵	Mar. 4, 1974	Mar. 4, 1974	New York Sea-port; \$50,000
Ernest W. Ripy, Jr. & Thomas B. Ripy dba Lawrenceburg Transfer Co., U.S. Hwy. 127 & 425 Junction, Lawrenceburg, Ky., motor carrier; Reliance Ins. Co.	Mar. 1, 1974	Mar. 27, 1974	Cleveland, Ohio; \$25,000
Norwalk Truck Lines, Inc., dba Ringsby United, 5773 S. Prince St., Littleton, Colo., motor carrier; Transport Indemnity Co.	Mar. 14, 1974	Mar. 26, 1974	El Paso, Tex.; \$25,000
Ringsby Pacific Ltd. dba Ringsby United, 5773 S. Prince St., Littleton, Colo., motor carrier; Transport Indemnity Co. (PB 9/14/72) D 3/19/74 ⁶	Mar. 4, 1974	Mar. 19, 1974	San Francisco, Calif.; \$25,000
Ringsby Truck Lines, Inc., dba Ringsby United, 5773 S. Prince St., Littleton, Colo., motor carrier; Transport Indemnity Co.	Mar. 12, 1974	Apr. 1, 1974	El Paso, Tex.; \$30,000

See footnotes at end of article.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
River Transport, Inc., P.O.B. 633, Charlottetown, P.E.I., Canada, motor carrier; Hartford Accident & Indemnity Co.	Dec. 15, 1973	Apr. 11, 1974	Portland, Me.; \$25,000
Schlek Motor Express Co., Inc., 90 Cassiday Ave., Joliet, Ill., motor carrier; General Ins. Co. of America. D 3/28/74	Apr. 10, 1972	May 2, 1972	Chicago, Ill.; \$25,000
Sea-Air Container Transport, Inc., 2350 W. 17th St., Long Beach, Calif., motor carrier; Agricultural Ins. Co. D 2/7/74	Oct. 29, 1971	Nov. 15, 1971	Los Angeles, Calif. \$25,000
Sherman & Boddie, Inc., P.O.B. 621, Oxford, N.C., motor carrier; U.S. Fire Ins. Co.	Mar. 11, 1974	Mar. 27, 1974	Wilmington, N.C.; \$25,000
Soffield Transfer Co., Inc., 1051 Edwards St., Linden, N.J., motor carrier; St. Paul Fire & Marine Ins. Co. D 3/16/74	Mar. 6, 1972	Mar. 7, 1972	New York Sea-port; \$50,000
Webb Truck Brokerage, P.O.B. 156, Pharr, Tex., motor carrier; Bankers & Shippers Ins. Co. of N.Y.	Jan. 17, 1974	Mar. 15, 1974	Laredo, Tex.; \$25,000
Western Transportation Co., Inc., 1440 E. 5th St., Los Angeles, Calif., freight forwarder; Royal Ins. Co. D 3/25/74	Dec. 5, 1955	Jan. 10, 1956	Los Angeles, Calif.; \$25,000
Westransco Freight Co., P.O.B. 54810, Los Angeles, Calif., motor carrier; Mid-Century Ins. Co. ¹	Mar. 11, 1974	Apr. 5, 1974	Los Angeles, Calif.; \$25,000
Zale Corp., 2210 St. Germaine Rd., Dallas, Tex., motor carrier; St. Paul Fire & Marine Ins. Co.	Feb. 20, 1974	Mar. 18, 1974	Houston, Tex.; \$25,000

¹ Surety is Pacific Ins. Co. of Calif.

² Surety is Fidelity & Deposit Co. of Md.

³ Surety is American Motorists Ins. Co.

⁴ Surety is Royal Indemnity Co.

⁵ Surety is General Ins. Co. of America.

⁶ Surety is General Ins. Co. of America.

⁷ T.D. 74-115 discontinued the previous bond dated August 25, 1969, on February 25, 1974. The discontinuance date should have been April 5, 1974.

(BON-3-03)

LEONARD LEHMAN,
*Assistant Commissioner,
Regulations and Rulings.*



(T.D. 74-139)

Customs Warehouses—Customs Regulations amended

Section 19.5(b), Customs Regulations, relating to the compensation of a Customs warehouse officer, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL
OF MERCHANDISE THEREIN

On November 12, 1973, there was published in the Federal Register (38 FR 31179), a notice of a proposed amendment to section 19.5(b) of the Customs Regulations (19 CFR 19.5(b)), to provide for an increase in the reimbursable charge to bonded warehouse proprietors for the services of an intermittent when-actually-employed employee (temporary customs employee), when such employee performs the duties of a Customs warehouse officer, or is temporarily assigned to act as a Customs warehouse officer at a bonded warehouse.

The reimbursable charge for this service would be increased from 107 percent to 108 percent of the hourly rate of the employee's regular pay.

The citations of authority in the text of section 19.5(b) and at the end of section 19.5 would also be changed to reflect the current citations

No comments were received in response to the notice of the proposed amendment.

Accordingly, section 19.5 of the Customs Regulations is amended as set forth below.

Effective date. This amendment shall become effective 30 days after publication in the Federal Register.

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved April 18, 1974:

JAMES B. CLAWSON,

Acting Assistant Secretary of the Treasury.

[Published in the Federal Register May 1, 1974 (39 FR 15117)]

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

In section 19.5, the third and fourth sentences of paragraph (b) are amended to read as follows:

§ 19.5 Customs warehouse officer; compensation of.

* * * * *

(b) * * *. The charge to be made for the services of a Customs warehouse officer or a Customs employee temporarily assigned to act as a Customs warehouse officer at a bonded warehouse on a holiday or outside his established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 5542(a), 5546), or the Customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. When services of a Customs warehouse officer or a Customs employee temporarily assigned to act as a Customs warehouse officer at a bonded warehouse are performed by an intermittent when-actually-employed employee, the charge for such services shall be computed at a rate per hour equal to 108 percent of the hourly rate of the regular pay of such employee to provide for reimbursement of the Government's contribution under the Federal Insurance Contributions Act, as amended (26 U.S.C. 3101, *et seq.*), and employee uniform allowance. * * *.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

The citation of authority for section 19.5 is amended to read:

(Sec. 5, 36 Stat. 901, as amended, secs. 451, 555, 556, 46 Stat. 715, as amended, 743, as amended, 68A Stat. 416, as amended; 5 U.S.C. 5332, 5504, 5542, 5545, 5546, 6101, 19 U.S.C. 267, 1451, 1553, 1556, 26 U.S.C. 3111)

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

(T.D. 74-140)

*Vessels in Foreign and Domestic Trades—Customs Regulations
amended*

Exemption from entry and clearance requirements and Customs charges for yachts of the St. Christopher-Nevis-Anguilla Islands; section 4.94(b), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

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TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 4—VESSEL IN FOREIGN AND DOMESTIC TRADES

The Department of State advised the Department of the Treasury on January 16, 1974, that yachts of the United States are permitted to cruise in the territorial waters of the St. Christopher-Nevis-Anguilla Islands, a Caribbean entity under British jurisdiction, without charges for entering or clearance, dues, duty per ton, tonnage taxes, or charges for cruising licenses.

Pursuant to section 5 of the Act of May 28, 1908, as amended (section 5, 35 Stat. 425, as amended; 46 U.S.C. 104), following a finding by the Secretary of the Treasury that a foreign nation has granted the above-described exemptions to yachts of the United States, the Commissioner of Customs may issue cruising licenses to yachts of that nation.

It has been demonstrated to the satisfaction of the Secretary of the Treasury that yachts of the United States are granted the above-described reciprocal privileges by the St. Christopher-Nevis-Anguilla Islands.

Accordingly, section 4.94(b) of the Customs Regulations is amended by amending the parenthetical material after "Great Britain" in the list of countries granting the previously-described reciprocal privileges to yachts of the United States to read "(including Turks and Caicos Islands, St. Vincent (including the territorial waters of the Northern Grenadine Islands), the Cayman Islands, and the St. Christopher-Nevis-Anguilla Islands)".

(Secs. 3, 23 Stat. 119, as amended, sec. 5, 35 Stat. 425, as amended; 5 U.S.C. 301, 46 U.S.C. 3, 104).

There is statutory authority for this exemption after a finding has been made that such reciprocity exists. Therefore, good cause exists for dispensing with notice and public procedure thereon as unnecessary, and good cause is found for the amendment to become effective at the earliest date possible under 5 U.S.C. 553.

Effective date. This amendment shall become effective on the date of its publication in the Federal Register.

(ADM-9-03)

LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved April 22, 1974:

MATTHEW J. MARKS,

Acting Assistant Secretary of the Treasury.

[Published in the Federal Register May 1, 1974 (39 FR 15116)]

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN RICHARDSON

OF THE

UNIVERSITY OF

OXFORD

IN TWO VOLUMES

LONDON

PRINTED BY

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(T.D. 74-141)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 19, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:

April 8, 1974	-----	\$0. 1975
April 9, 1974	-----	. 1975
April 10, 1974	-----	. 1975
April 11, 1974	-----	. 1970
April 12, 1974	-----	. 1965

Iran rial:

For the period April 8 through April 12, 1974, rate of \$0.0149.

Philippines peso:

For the period April 8 through April 12, 1974, rate of \$0.1480.

Singapore dollar:

April 8, 1974	-----	\$0. 4100
April 9, 1974	-----	. 4110
April 10, 1974	-----	. 4090
April 11, 1974	-----	. 4110
April 12, 1974	-----	. 4110

Thailand baht (tical):

For the period April 8 through April 12, 1974, rate of \$0.0490.

(LIQ-3-O:A:E)

J. D. COLEMAN,
Acting Director,
Duty Assessment Division

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1116)

THE UNITED STATES V. JOHN V. CARR & SON, INC. No. 5536 (—F. 2d—)

1. CLASSIFICATION—CONTROL BOARDS—TSUS

Customs Court judgment sustaining appellee's protest that certain control boards and protective circuit boards were classifiable under TSUS item 692.40 as parts of fork-lift trucks instead of under item 685.90 setting forth certain electrical apparatus and parts thereof, as classified, reversed.

2. CONSTRUCTION—COMMON MEANING—GENERAL INTERPRETATIVE RULE 10(ij)

The Customs Court should have considered the common meaning of the terms employed in TSUS item 685.90 before holding that item is not a specific provision for the imported control and protective circuit boards under General Interpretative Rule 10(ij).

United States Court of Customs and Patent Appeals, April 25, 1974

Appeal from United States Customs Court, C.D. 4411

[Reversed]

Irving Jaffe, Acting Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Robert B. Silverman* for the United States.

Barnes, *Richardson & Coldburn*, attorneys of record, for appellee. *Joseph Schwartz and Irving Levine*, of counsel.

[Oral argument April 2, 1974, by Mr. Silverman and Mr. Schwartz]

Before *MARKEY*, Chief Judge, *RICH*, *BALDWIN*, *LANE* and *MILLER*, Associate Judges.

MARKEY, Chief Judge.

This appeal is from the decision and judgment of the United States Customs Court, 70 Cust. Ct. 80, C.D. 4411, 358 F.Supp. 280

(1973) sustaining appellee's claim that the subject merchandise was improperly classified. We reverse.

The Importations

The merchandise consists of two kinds of transistorized printed wiring board assemblies, one invoiced as a "control board" and the other as a "protective circuit board." Both assemblies are used as parts of a pulse modulation system for operating fork lift trucks. In such a system, the motor is supplied with energy in distinct pulses spaced at equal intervals of time through a solid state switch device in the battery circuit. The control board provides electrical pulses to control the opening and closing of the device. The pulses are varied in width by the operator to provide stepless control of the motor speed. According to appellee's witness Evans, the protective circuit board monitors the control board and "induces a large contactor to open the power circuits" in case of malfunction of the control board.

The Classifications and Statutes

The importations were classified under TSUS item 685.90 reading:

Electrical switches, relays, fuses, lightning arresters, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes and other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; switchboards (except telephone switchboards) and control panels; all the foregoing and parts thereof... 14% ad val.

The claimed classification as approved by the Customs Court was TSUS item 692.40, which reads in pertinent part:

Fork-lift trucks, platform trucks and other self propelled work trucks, * * *; and parts of the foregoing trucks and tractors.

Other tariff provisions involved are:

General Headnotes and Rules of Interpretation:

10. *General Interpretative Rules.* For the purposes of these schedules—

* * * * *

(e) in the absence of special language or context which otherwise requires—

(i) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong,

and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined;

(ii) a tariff classification controlled by the actual use to which an imported article is put in the United States is satisfied only if such use is intended at the time of importation, the article is so used, and proof thereof is furnished within 3 years after the date the article is entered;

* * * * *

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

The Decision of the Customs Court

[1] The Customs Court held that the importations were excluded from TSUS item 685.90 "because the are unrelated to electrical power circuits," relying on *United States v. General Electric Co.*, 58 CCPA 152, C.A.D. 1021, 441 F.2d 1186 (1971). Accordingly, it was deemed unnecessary to consider "the common meaning of the terms employed in item 685.90 to describe the articles covered thereby." As to item 692.40, the court held that the provision for parts of fork-lift trucks in that item "is not a tariff classification which is controlled by the chief use principle of general rule 10(e) (i)." It then stated:

* * * General Interpretative Rule 10(ij) states, among other things, that a provision for "parts" of an article covers a product solely or chiefly used as a part of *such* article. Thus, "actual use" of the imported merchandise governs a "parts" tariff classification provision, subject, of course, to the relative specificity principle written into general rule 10(ij). And "actual use" is excepted from the chief use principle set forth in general rule 10(e) (i) relied upon by the defendant. In this connection, it is to be noted that our appeals court in C.A.D. 1021 sustained the "parts" classification contended for by the importer on the basis of the record evidence of the "actual use" of the imported parts without regard to any consideration of the chief use principle set forth in general rule 10(e) (i).

Hence, in line with the requirements of general rule 10(ij), plaintiff need only prove here the *actual use* of the imported boards as a predicate for classification under item 692.40. And the court is satisfied from the instant record that plaintiff has established the imported boards to be parts of forklift trucks within the meaning of item 692.40 consistent with the requirements of general rule 10(ij).

Having found that appellee's evidence established that the importations were actually used in the manufacture of fork-lift trucks by the importer, Allis-Chalmers Manufacturing Company, the court found the claim for classification of the imported control and protective circuit boards under item 692.40 as parts of forklift trucks to be sustained

by the record, which included testimony of two witnesses for appellee and one for appellant along with certain exhibits.

Opinion

With great deference to the fact that the learned trial court heard the witnesses and observed the initial presentation of the exhibits, we think the court erred in its application of *General Electric* to the present facts. There the goods were jacks for insertion into radio circuits to convey audio signals to earphones. We stated:

We cannot agree with appellant's argument that rule 10(ij) requires that the provision of item 685.90 for "other electrical apparatus for making or breaking electrical circuits" must prevail over the provision for parts of radio reception apparatus in item 685.22. This is because we think the Customs Court was correct in its holding that the imported jacks, used in low current audio circuits, are not specifically provided for in item 685.90 since the items enumerated therein all relate to electrical power circuits.

We then expressed the opinion that the jacks there were "not * * * the type of article that Congress intended to encompass by item 685.90" and concluded that "'other electrical apparatus for making or breaking electrical circuits' in item 685.90, TSUS, is not a specific provision [rule 10(ij)] for the imported jacks."

In *General Electric* and in *Midland International Corporation v. United States*, 62 Cust. Ct. 164, C.D. 3715, 295 F. Supp. 1101 (1969), cited therein, it was held that the items in 685.90 relate to power circuits, as contrasted to audio circuits. There is no contention and no evidence indicating that the circuits here involved are low current audio circuits. The testimony of appellee's own witnesses is that 500 to 800 amperes may pass through the "major power circuit." The control board itself carries five to ten amperes. The present importations participate directly in the operation of the switch elements that control energization of the motor. Thus they *do* relate to the main power circuit and *General Electric* does not constitute authority for excluding the present importations from item 685.90.¹

[2] The Customs Court thus should have considered the common meaning of the terms employed in item 685.90 in light of the evidence of record, before holding the classification of the District Director erroneous. On examination of the evidence, we are convinced that the importations are within the common meaning of at least certain of the articles in 685.90, including particularly "other electrical apparatus

¹ An effort, based on *General Electric*, to incorporate a requirement for use with electric power in TSUS item 685.15, "Insulated electrical conductors, other," was not accepted by the court in *United States v. Amper Corp.*, 59 CCPA 134, C.A.D. 1054, 460 F. 2d 1086 (1972).

for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits. * * * control panels; * * * and parts thereof." We therefore hold that appellee has failed to carry the first portion of its burden, i.e. to overcome the presumption that the District Director's classification was correct.² See *New York Merchandise Inc. v. United States*, 59 CCPA 127, 459 F. 2d 1047, C.A.D. 1052 (1972); 28 USC 2635(a).

The Customs Court further erred in holding that the actual use of the importations in issue governs their tariff classification. That holding is not supported by rule 10(ij), supra, which limits the provision for "parts" of an article to a product "solely or chiefly used" as a part of such article.³ The court apparently considered the reference to "actual use" in the parenthetical expression in general rule 10(e) (i) as creating an exception to rule 10(ij). But that parenthetical expression means that "actual use" is to be considered only when the tariff classification under review is *controlled* by actual use. Nothing in the law argued by the parties or in the evidence of record demonstrates that either item 685.90 or item 692.40 is so controlled. Hence, rule 10(ij) was fully applicable herein and appellee, to sustain its claimed classification as "parts of fork lift trucks," was required to prove sole or chief use as such. The evidence of record does not convince us that the present importations are solely or chiefly used as parts of fork lift trucks.

The Customs Court's reference to our decision in *General Electric* as sustaining a "parts" classification is mistaken. The subject of "sole" or "chief" vs. "actual" use is not discussed in that opinion. The decision of the Customs Court, which we sustained in *General Electric*, specifically held that the importer had established chief use, as required by rule 10(ij). (63 Cust. Ct. 140 at 145)

Appellee has thus failed to meet the second portion of its burden, i.e. to establish that the claimed classification is correct. See *New York Merchandise Inc. v. United States*, supra. The judgment of the Customs Court must be reversed.

² Appellee argues in his brief that mention of "Electrical apparatus for the protection of electrical circuits; control panels; and parts thereof" in the District Director's reference to item 685.90, in affirming the classification in response to the protest, limits the presumption of correctness to the specified articles. We think appellee's argument is wrong. It is apparent from the record that all the items in 685.90 were considered in issue throughout the proceedings below. Moreover, limitation of the presumption is not entitled to our consideration because it was raised here for the first time. See *United States v. Superwood Corporation*, 52 CCPA 57, C.A.D. 858 (1965).

³ There is evidence that articles similar to the control board were sold to a submarine builder and to the Post Office a few years prior to the time of the present importations.

(C.A.D. 1117)

GREEN GIANT CO. v. THE UNITED STATES No. 5533 (—F. 2d—)

1. CLASSIFICATION—FROZEN MUSHROOMS (OTHERWISE PREPARED OR PRESERVED) TSUS

Customs Court decision overruling importer's protest against classification of imported blanched and frozen mushrooms as "fresh" mushrooms under item 144.10, Tariff Schedules of The United States (TSUS), and rejecting importer's claim that mushrooms are "otherwise prepared or preserved" under item 144.20, TSUS, reversed.

2. ID.—DISTINGUISHABLE FROM PRIOR CASES

Present case involving mushrooms which had been washed, blanched and frozen is distinguishable from prior cases which involved salted fish roe and frozen lamb since present case involves more than just freezing.

3. "DRAINED WEIGHT"—ITEM 144.20

Rate of duty based on "drained weight" for item 144.20 TSUS, does not limit item to canned mushrooms since language of item 144.20 is "otherwise prepared or preserved", and blanched and frozen mushrooms are imported in drained status.

United States Court of Customs and Patent Appeals, April 25, 1974

Appeal from United States Customs Court, C.D. 4401

[Reversed]

Glad, Tuttle & White, attorneys of record, for appellant. *Edward N. Glad*, of counsel.

Irving Jaffe, Acting Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Saul Davis*, for the United States.

[Oral argument January 7, 1974, by Mr. Glad and Mr. Davis]

Before *MARKEY*, Chief Judge, *RICH*, *BALDWIN*, *LANE* AND *MILLER*, Associate Judges.

LANE, Judge.

[1] This is an appeal from the judgment of the United States Customs Court¹ overruling appellant's protest against the classification of certain blanched and frozen mushrooms as "fresh" mushrooms under item 144.10 of the Tariff Schedules of the United States (TSUS), and re-

¹ 70 Cust. Ct. 20, 355 F. Supp. 1397, C.D. 4401 (1973).

jecting appellant's claim that the imported mushrooms are "otherwise prepared or preserved" under item 144.20, TSUS. We reverse.

The pertinent statutory provisions are as follows:

Mushrooms, fresh, or dried, or otherwise prepared or preserved:

144.10	Fresh -----	5¢ per lb. + 25% ad val.
* * *	Dried -----	* * *
144.20	Otherwise prepared or preserved-----	3.2¢ per lb. on drained wt. + 10% ad val.

The imported merchandise consisted of mushrooms which were grown and processed in Taiwan. The processing consisted of: (a) washing, (b) sorting, (c) trimming, (d) blanching, and (e) "quick-freezing." The most important steps regarding the present controversy are washing, blanching, and freezing.

The washing step was carried out in a wash tank where the fresh mushrooms were subjected to washing and to continuous movement by flowing water.

The blanching step was carried out in a machine called a "water blancher" which is accurately described in the opinion of the Customs Court. The mushrooms are subjected to water kept at a "rolling boil" (210°F.) for a period of 80 to 95 seconds. Mr. John L. Welch, Director of Food Science for appellant and a graduate chemist, testified (in response to questions from the bench) that the purpose of the blanching step was two-fold: first, to reduce the bacterial load in the mushrooms; and second, to inactivate the surface enzymes in the mushroom which otherwise cause excessive discoloration. Mr. Welch stated that mushrooms are 90 percent moisture or water, and he described them as being "very tender," "very easily bruised," and "very prone to degradation." Mr. Welch further testified (on voir dire examination by the Government trial attorney) that the heat absorbed by the mushrooms during the blanching step initiates a "browning reaction" (shown by photographic slides which are exhibits in the case) and a 10 to 12 percent loss of moisture. The following testimony by Mr. Welch (again in response to questions from the bench) was particularly graphic in describing the changes produced by the blanching step:

The Court: * * * would you say that the blanching produces a change in the natural condition of the mushroom?

The Witness: Yes, indeed.

The Court: In what respect?

The Witness: The tissue is disrupted. It would be like holding your hand in boiling water for a minute. You can imagine what would have occurred to the skin of your hand and also to the tissue beneath it. This also occurs to a mushroom when you blanch it.

Mr. John W. Moody, the Far East Operations Manager for appellant, fairly summarized the effects of the blanching step when he testified " * * * by the blanching process, you partially cook * * * and retard any deterioration of the mushroom from within * * *."

The freezing step was carried out in a "Lewis tunnel" which is accurately described in the opinion of the Customs Court. The temperature in the tunnel is maintained between minus 45° F. and minus 37° F. The washed, blanched and drained mushrooms are kept in the freezing tunnel for a period of 8 minutes which is sufficient to "quick-freeze" the individual mushrooms. The frozen mushrooms are then placed in polyethylene-lined shipping containers and transported to the United States via cold-storage vessels which maintain the frozen condition. The purpose of the freezing step is to increase the "shelf life"—the span of time that the mushrooms remain in an edible condition—from one day (raw mushrooms at room temperature) to two or three years (blanched and frozen mushrooms at minus 10° F.).

In addition to the foregoing evidence bearing on the processing of the mushrooms prior to importation, appellant also produced evidence of how the imported frozen mushrooms are used by consumers in the United States. Mrs. Mary E. Jordal, Director of Home Services for the Green Giant Co. and an experienced home economist, testified that the uses for the blanched and frozen mushrooms were much more limited than for raw mushrooms or canned mushrooms. This witness stated that the frozen mushrooms must be prepared by the homemaker according to the specific instructions found on the consumer carton, which was admitted as Plaintiff's Exhibit 1. The instructions referred to describe a single method of preparation—sautéing the frozen mushrooms in a saucepan over "high heat for 5 minutes" and then reducing the heat and cooking until the mushrooms are "golden brown." The instructions warn the consumer: "Keep frozen until ready to use. Do not re-freeze." When asked if the frozen mushrooms could be thawed, and then sliced and used as a raw fresh mushroom, Mrs. Jordal responded:

No, you definitely could not because if you were to simply thaw them at room temperature, they would become very squishy, rubbery, and watery and they would just look very spoiled. The appearance would be drastically altered.

The Customs Court overruled the importer's protest on three grounds: (1) that since prior judicial interpretation of the terms "preserved" and "prepared" had established that neither blanching nor freezing constituted preparation or preservation, then blanched and frozen mushrooms were not "prepared or preserved" for tariff purposes; (2) that while appellant had established certain differences in

the use of frozen mushrooms compared to fresh mushrooms, nevertheless appellant had failed to establish its claimed classification (item 144.20, TSUS); and (3) that appellant's claimed classification was not correct because under it the rate of duty is on the "drained weight" and in the Tariff Act of 1930 this language was intended to refer to only canned mushrooms.

For the broad proposition that freezing alone does not constitute "preservation," the lower court cited and relied on three cases: *Moscaklades Bros. v. United States*, 6 Ct. Cust. Appls. 399, T.D. 35973 (1915), *United States v. Conkey & Co.*, 12 Ct. Cust. Appls. 552, T.D. 40783 (1925), and *John A. Conkey & Co. v. United States*, 16 Ct. Cust. Appls. 120, T.D. 42766 (1928).

Moscaklades involved fish roe treated with salt and salt water, and the specific question was whether the merchandise was properly classified as "preserved roe of fish" or, as the importer claimed, as "eggs of roe" under different paragraphs of the Tariff Act of 1913. The predecessor of this court held that the salted fish roe were not "preserved" as that word was used in the statute.

The two other cases (*United States v. Conkey & Co.* and *John A. Conkey & Co. v. United States*) involved frozen lamb from Argentina, and the specific question was whether the merchandise was properly classified as "fresh lamb" or, as the importer claimed, as "meats, prepared or preserved, not specifically provided for" under different paragraphs of the Tariff Act of 1922. The court held in each case that the frozen lamb was properly classified as "fresh lamb" by the doctrine of similitude.

[2] The present case is clearly distinguishable from these three cases for the simple reason that this case involves *more than* just freezing since the mushrooms were also washed and blanched. Being aware of these distinctions, the court below cited two additional cases for the proposition that blanching alone does not constitute preparation or preservation. The two additional cases are *Border Brokerage Co., Inc. v. United States*, 60 Cust. Ct. 487, 284 F. Supp. 806, C.D. 3437 (1968) and *North Pacific Cannery and Packers v. United States*, 64 Cust. Ct. 551, C.D. 4034 (1970).

Border Brokerage involved a green vegetable described as "fiddlehead greens." The vegetable was blanched and frozen in Canada prior to importation. The merchandise was classified under item 137.70, TSUS, as "Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved): * * * Other," and one of the issues was "whether blanching as a step of the freezing process, in itself constitutes preparing or preserving *otherwise than by freezing*." (emphasis added) The court found that the blanching was an essential step in the commercial process of freezing fiddlehead greens.

Therefore, the court held that the blanching *could not in itself* constitute preparing or preserving *otherwise than by freezing* since the blanching was a part of the overall freezing process. Thus, *Border Brokerage* is authority for the narrow point, not involved here, that blanching, "as a step of the freezing process," does not in itself constitute preparing or preserving otherwise than by freezing.

North Pacific Cannery involved blanched and frozen onions imported from Holland. The merchandise was classified under item 138.00, TSUS, as "Vegetables, fresh, chilled, or frozen, and *cut, sliced, or otherwise reduced in size* (but not otherwise prepared or preserved)." (emphasis added) The sole issue was "whether the onions at bar, which were imported with the roots, stems and outer covering removed, are *cut, sliced, or otherwise reduced in size* within the intentment of item 138.00." (emphasis added) The court held, with one dissent, that plaintiff had failed to prove that the onions were not "cut, sliced, or otherwise reduced in size." Thus, *North Pacific Cannery* is unrelated to the issue involved in the instant appeal. Viewing the five cases cited by the court below, we find that they are of no benefit in resolving the question of law here presented.

Turning now to the appellant's dual burden of negating the District Director's classification and establishing the proper classification, we agree with the court below that the evidence has established certain differences in the *use* of blanched and frozen mushrooms compared to fresh mushrooms. The testimony of Mrs. Jordal, the home economist, demonstrated this point very clearly. Furthermore, we conclude that the evidence established that the classification as "fresh mushrooms" was erroneous. In addition to the differences in use between frozen and fresh mushrooms, the uncontroverted evidence indicated that the term "fresh mushrooms" as used in commerce referred to a mushroom which is untreated in any way after picking and removing the root. Thus, the washing step and the blanching step take the instant mushrooms clearly beyond the "fresh" category. We are convinced that the effects of the blanching step are irreversible and sufficiently drastic that the mushrooms cannot properly be classified as "fresh mushrooms." We recognize that the term "fresh frozen" may be loosely applied to the imported merchandise, but in view of the evidence "fresh" is not an accurate descriptor of the washed, blanched and frozen mushrooms for tariff purposes.

With respect to appellant's second burden of establishing the correct classification, we conclude that the totality of the evidence establishes that washing, blanching, and freezing the mushrooms constitutes "preparation or preservation" for tariff purposes. The same evidence which demonstrates the impropriety of the "fresh mushrooms" classi-

fication establishes the correctness of the "otherwise prepared or preserved" classification.

Mr. Welch, the Director of Food Science for appellant, specifically testified on cross examination that the washing step is a preparation step in the case of mushrooms. This is consistent with the fact that the term "fresh mushrooms," as used in commerce, refers to mushrooms which are untreated in any way after picking and removing the root.

Mr. Welch further testified on cross examination that the process of blanching is a "preparation step" prior to freezing, which he described as a "preservation procedure." The Government's sole witness, Dr. Howard E. Bauman, who is the Vice President of Science and Technology for the Pillsbury Co., testified that blanching and freezing are "both preservation steps in that blanching will destroy the surface enzymes and the freezing will retard any additional changes in the product." We note the difference in terminology used by the two witnesses, but the important point is that the testimony of both witnesses demonstrates the correctness of appellant's claimed classification.

[3] The Customs Court referred to the fact that the rate of duty for item 144.20, TSUS, claimed by appellant is for the "drained weight" of the mushrooms. The reference to "drained weight" may have been specifically adopted in the Tariff Act of 1930 for canned mushrooms as the Customs Court opinion indicates. This fact, however, does not weaken appellant's case, since the evidence tends to support appellant's contention that blanched and frozen mushrooms were not available commercially until 1965. In any event, the language of item 144.20 is "otherwise prepared or preserved," and this is clearly not restricted to only canned mushrooms. Since appellant's blanched and frozen mushrooms are imported in a drained status, there is no problem in applying the rate of duty claimed.

Our conclusion based on the entire record is that appellant has demonstrated the correctness of the claimed classification for the blanched and frozen mushrooms as "otherwise prepared or preserved." We think that this result is consistent with the intent of Congress and note that in Headnote 1(e), Subpart B [Edible Fruits], Part 9 [Edible Nuts and Fruits], of Schedule 1, TSUS, Congress has stated that "the term 'prepared or preserved' covers fruit which is dried, in brine, pickled, *frozen*, or otherwise prepared or preserved * * *." (emphasis added) Thus, in the case of edible fruit, Congress has equated freezing with "prepared or preserved," and we think the same equation holds true for blanched and frozen mushrooms. For the reasons set forth, the judgment of the Customs Court is *reversed*.

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Niles A. Boe

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Edward D. Re

Senior Judges

Charles D. Lawrence
David J. Wilson
Mary D. Alger
Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Decisions

(C.D. 4514)

NICHIMEN Co., INC. v. UNITED STATES

Net articles

NETTING—GOLF EQUIPMENT

Netting cut to size prior to importation for installation at specific golf driving ranges to keep golf balls from leaving the area of play is not golf equipment. The tariff provisions for sports "equipment"

cover articles specially designed for the use of the player in the conduct of the sport. The imported netting is not primarily designed for the use of the player.

Court No. 67/50788

Port of San Francisco

[Judgment for defendant.]

(Decided April 16, 1974)

Glad, Tuttle & White (John McDougall and George R. Tuttle of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (Joseph I. Liebman, trial attorney), for the defendant.

WATSON, Judge: This case involves merchandise which is both literally and figuratively on the borderline of the claimed provision for "golf equipment." The merchandise consists of netting specially cut to size for use on certain golf driving ranges, either to guard against injury to persons or property in adjacent areas or to contain the flight of the golf ball.

The imported merchandise was classified as net articles not specially provided for pursuant to item 386.05 of the TSUS and assessed with duty at the rate of 50 per centum ad valorem. Plaintiff claims classification as other golf equipment provided for in item 734.77 of the TSUS dutiable at the lesser handicap of 15 per centum ad valorem.

The parties have defined the issues in two stages: first, whether the class to which the imported merchandise belongs is chiefly used in connection with the sport of golf, and second, whether such use is as "golf equipment" within the meaning of that statutory term.

Since the evidence clearly establishes that the imported merchandise was cut to size for specific golf installations prior to importation, it seems to me that insofar as use is concerned, it is dedicated for use in connection with particular golf driving ranges and is unsuitable for other uses without complete modification. It therefore is unnecessary to speak of chief use when the actual use is shown to be the only possible use. *CF. International Distributors, Inc. v. United States*, 57 Cust. Ct. 369, C.D. 2822 (1966); see also, *J. Gerber & Co., Inc. v. United States*, 65 Cust. Ct. 347, C.D. 4101 (1970).

In this case, the cutting and edging of the netting prior to importation with specific golfing locations in mind so that the netting is no longer capable of alternative uses in its condition as imported is an essential distinguishing factor. If the netting involved herein could be used in its condition as imported for other purposes, the ordinary bur-

den of proving its chief use in connection with golf could not be avoided by plaintiff. It would then be plaintiff's burden to show the chief use of the class of article of which the importation is a member. *United States v. Colibri Lighters (U.S.A.) Inc.*, 67 CCPA 106, C.A.D. 739 (1960). However, the netting involved herein was removed from the class of netting prior to importation by being specially cut to size for certain golf installations and simultaneously rendered unfit for other uses without modification. In effect, the imported netting has been shown to be a custom-made article whose actual use is ipso facto its chief use. Stated differently, the imported netting forms its own class, whose actual use is then its chief use.

The foregoing reasoning serves only to overcome one objection to plaintiff's claim; namely, that it has failed to prove the chief use of the class to which the importation belongs. A more serious objection remains even if we grant the use of the imported netting in connection with golf driving ranges. This objection relates to the meaning of the term "golf equipment."

Upon reflection and despite an awareness of the generally broad interpretation given to the term "equipment," I am of the opinion that the imported netting falls outside the scope of the provision for golf equipment. Quite simply, the role of the imported netting has an insufficient connection to the player's practice of the sport. In use it functions not so much as an aid to the player but as a means of protecting persons and property outside the playing area. In this respect it differs dramatically from those articles which, although not indispensable to play, have a direct relation to the conduct of a game and are specially designed as such.

I have in mind the tennis gloves which were the subject of *American Astral Corporation v. United States*, 62 Cust. Ct. 563, C.D. 3827, 300 F. Supp. 658 (1969) and which the court decided were tennis equipment. The court stated as follows at page 571:

* * * For the statutory designation of "equipment" is satisfied once it is shown that the article is specially designed for use in the game or sport. And in this connection * * * the imported articles are not normal gloves, but rather are gloves that have been specially designed for use in the game of tennis as an aid and protective device for the player.

Although the imported nets have been "specially designed" in a certain sense, the design intention relates to the exigencies of the location where the sport is to be played and not to their use by the player either to aid him or protect him. In other words, the nets have not been specially designed for the use of the player. As flexible as the term "equipment" has become, I still consider it essential that an article

which is not indispensable to play be designed specially and primarily for the use of a player. If the article is not primarily designed for use by the player during the course of play, it is not "equipment" within the meaning of that statutory term. By this standard I distinguish articles which may be specially designed for use in connection with a sport but not primarily for the use of the players. Into this category of articles, such as those designed for the protection of spectators, I would place the imported nets. They are designed for use "at" the sport and not "in" the sport.

In sum, although the imported netting is specially designed for use at certain golf driving ranges, its use in such locations is not primarily to aid the players in the conduct of the sport of golf, and it is, therefore, not golf equipment. This being the case, plaintiff's protest must be overruled and the district director's classification sustained.

I note that plaintiff has failed to pursue the claim in its complaint relating to the existence of a uniform established practice concerning the merchandise at issue. I deem that claim to have been abandoned and accordingly dismiss it.

Judgment will enter accordingly.

(C.D. 4515)

F. W. MYERS & Co., INC. v. UNITED STATES

*On Defendant's Motion for
Judgment on the Pleadings*

Court Nos. 70/14983, etc.

Port of Champlain-Rouses Point on Chemicals

[Motion granted.]

(Dated April 18, 1974)

Siegel, Mandell & Davidson (Brian S. Goldstein of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Wesley K. Caine*, trial attorney),
for the defendant.

RAO, Judge: In this motion for judgment on the pleadings, defendant claims that the complaints in the actions herein indicate the plaintiff has failed to meet all the conditions precedent to classification under item 806.20, Tariff Schedules of the United States, and that therefore defendant is entitled to judgment dismissing the actions and overruling all claims by plaintiff.

According to the complaints, the merchandise is refined naphthalene which was exported from the United States to Canada for the purpose of altering its physical form by a process of sublimation. It was thereafter returned to the United States and was assessed with duty under item 403.06, Tariff Schedules of the United States. It is claimed that it should have been classified under item 806.20, as articles exported for repairs or alterations, and duty assessed under item 403.06 on the cost of the alterations only. It is also alleged:

That all Customs regulations pertaining to the entry of merchandise under Item 806.20, TSUS, have been complied with except the failure to file Customs Form 4455, as required by Customs Regulations § 10.8(d);

That the failure to fill [sic] Form 4455, as set forth in paragraph "FOURTEENTH" was not due to "willful negligence or fraudulent intent" within the meaning of § 10.112 of the Customs Regulations;

Item 806.20 provides:

Articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means:

806.20 Articles exported for repairs or alterations -----

A duty upon the value of the repairs or alterations (see headnote 2 of this subpart)

Pertinent also is headnote 1 to schedule 8:

1. * * * except as provided in headnote 3 to part 1 of this schedule, any article which is described in any provision in this schedule is classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.

General headnote 11 to the tariff schedules provides that the Secretary of the Treasury may issue rules and regulations governing the admission of merchandise and that

* * * The allowance of an importer's claim for classification under any of the provisions of the schedules which provide for total or partial relief from duty or other import restrictions on the basis of facts which are not determinable from an examination of the article itself in its condition as imported, is dependent upon his complying with any rules or regulations which may be issued pursuant to this headnote.

The quoted sentence relates to mandatory rules and regulations pursuant to which certain articles are accorded preferred treatment

only upon compliance with the regulations. Tariff Classification Study Submitting Report, p. 19.

Section 10.8 of the Customs Regulations* provides *inter alia*:

10.8 Articles exported for repairs, alterations or processing.

* * * * *

(d) Before the exportation of any article to be subject on return to the United States to duty on the value of repairs, alterations, or processing effected abroad as provided for in item 806.20 or item 806.30, Tariff Schedules of the United States, a declaration and application shall be filed in duplicate on customs Form 4455 by the owner or exporter with the collector of customs or appraiser of merchandise at a time before the departure of the exporting conveyance which will permit an examination of the article.

Plaintiff does not dispute that this regulation is mandatory and a condition precedent to recovery but claims that pursuant to Customs Regulation § 10.112, it may file the necessary document at the trial and then produce competent testimony that the delay in filing was not due to wilful negligence.

Said section provides:

10.112 Filing free entry documents after entry.—Whenever a document, form, or statement required by regulations in this part to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production but failure to file it was not due to wilful negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final.

On a motion by defendant for judgment on the pleadings, the facts well pleaded in the complaints and the inferences reasonably flowing therefrom are deemed admitted, but not their sufficiency as a matter of law. *Rosenhan v. United State*, 131 F.2d 932 (1942), *cert. den.* 318 U.S. 790 (1943); *Brown v. Bullock*, 194 F. Supp. 207 (1961), *aff'd* 294 F.2d 415 (1961); *Kohen v. H. S. Crocker Company*, 260 F.2d 790 (1958); *Harry G. John Jr., et al. v. United States*, 138 F. Supp. 89, 95 (1956); *C. J. Tower & Sons of Buffalo, Inc., a/c Metco, Inc. v. United States*, 68 Cust. Ct. 377, C.R.D. 72-11, 343 F. Supp. 1387 (1972) and cases cited.

The court will assume that the facts alleged can be sustained at the trial and that those are the facts on the basis of which plaintiff seeks recovery. *Stichman v. Fischman*, 154 F. Supp. 867, 871 (1957).

*The Customs Regulations referred to herein are those in effect at the time of the exportation and importation of this merchandise. Some changes have been made by T.D. 72-119 (1972).

The issue is one of law, whether the pleaded facts, viewed in a light most favorable to plaintiff, provide any conceivable basis for permitting plaintiff to recover. *Dyson v. General Motors Corporation*, 298 F. Supp. 1064 (1969); *Art Metal Const. Co. v. Lehigh Structural Steel Co.*, 116 F.2d 57 (1940); *Friedman v. Washburn Co.*, 145 F.2d 715 (1944); *United States v. Logan Company*, 130 F. Supp. 550, 552 (1954).

The motion will be denied unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of his claim. *Brown v. Bullock*, *supra*; *C. J. Tower & Sons of Buffalo, Inc., a/c Metco, Inc. v. United States*, *supra*; *National Surety Corp. v. First Nat. Bank in Indiana et al.*, 106 F. Supp. 302 (1952).

Thus, for the purpose of this motion, it is assumed that plaintiff can produce the declaration and application required by section 10.8 (d) at the trial and can establish that late filing was not due to fraud or wilful negligence.

The issue is whether section 10.112 of the Customs Regulations is applicable in this case.

This section was first promulgated in 1960 to relieve existing restrictions to the filing of free entry documents and to specify conditions for filing them after entry or after expiration of the bonded period. 95 Treas. Dec. 86, T.D. 55059 (1960).

In a decision handed down the following year, the court pointed out that the regulations which had theretofore been issued as to the free entry of American goods returned required that certain documents be filed in connection with the entry and allowed the collector to waive filing of some but not all of them. *Bertrand Freres, Inc., et al. v. United States*, 47 Cust. Ct. 155, C.D. 2296 (1961). The court said (p. 159):

However, it has been held that the collector may not waive production of customs Form 3311 and that the filing thereof after entry and after the bonded period does not meet the requirements of the regulations. *United States v. Saunders et al.*, 6 Ct. Cust. Appls. 86, T.D. 35337; *Wedemann, Godknecht & Lally (Inc.) v. United States*, 60 Treas. Dec. 566, T.D. 45175; *J. J. Distributing Co. et al. v. United States*, *supra*; *Christian Dior, N.Y., Inc. v. United States*, *supra*, *Bluefries New York, Inc. v. United States*, *supra*. The result has been to prevent the allowance of free entry by the court in cases where the merchandise would otherwise have been entitled thereto. *Christian Dior, N.Y., Inc. v. United States*, *supra*; *Bluefries New York, Inc. v. United States*, *supra*.

It was obviously to meet this kind of situation that the new regulation was adopted. It does not enlarge the class of merchandise entitled to free entry, since proof that the imported articles in fact fall within the terms of the statute must be presented to the court

by evidence or stipulation. What it does do is to make the condition precedent to the vesting of the right of free entry less onerous by extending the time during which the documents may be filed. Since there is nothing in the statute which requires that the condition be met within a certain time, the regulation is neither unreasonable nor clearly outside the authority granted to the Secretary.

See also *Lockwood & Freidin v. United States*, 58 Cust. Ct. 210, C.D. 2941 (1967) and *F. W. Myers & Co., Inc. v. United States*, 70 Cust. Ct. 202, C.D. 4431, 360 F. Supp. 429 (1973). The section is, however, unavailing where the documents are never filed. *A. E. Coppersmith v. United States*, 50 Cust. Ct. 8, C.D. 2381 (1963); *Border Brokerage Company v. United States*, 59 Cust. Ct. 289, C.D. 3143 (1967); *George L. Walsh v. United States*, 61 Cust. Ct. 252, C.D. 3591 (1968).

In *Hertry Co., Inc. v. United States*, 45 Cust. Ct. 210, Abstract 64361 (1960), it was held that section 10.112 was applicable to shipper's repair statements required by section 10.8(i) of the regulations to be filed in connection with the entry and that by virtue of the new section, they might be filed after liquidation and the filing of the protest, but before the liquidation became final.

In *H. F. Keeler v. United States*, 45 CCPA 67, C.A.D. 675 (1958), an American-made airplane was exported to Canada for the purpose of having it repaired. The plaintiff did not file an application on customs Form 4455 prior to the departure of the plane and the plane was not delivered to the collector for examination before exportation. After its return, plaintiff claimed that duty should have been assessed on the cost of the repairs or alterations only. The claim was overruled on the ground that the regulations had not been complied with. Plaintiff had claimed that section 10.42 rather than section 10.8 of the regulations was applicable. The former concerned repairs made to vehicles incidental to their use abroad. The courts rejected plaintiff's contention, and in the course of its opinion, the Customs Court said (38 Cust. Ct. 48, 53, C.D. 1842 (1957)):

* * * The only purpose of section 10.42(c) is to provide a means of identifying a vehicle upon its return to this country. It has nothing to do with the requirements of section 10.8(b), (c), and (d) as to action to be taken prior to exportation of an article for repairs or alterations. Even if the certificate issued by the Department of Commerce might be accepted in lieu of customs Form 4455 to meet the requirement of section 10.8(g), production of such certificate *at the time of importation and entry* does not obviate the necessity of complying with section 10.8(b), (c), and (d) *at the time of exportation*. These subsections not only require that an affidavit and application be filed before exportation, but that the articles themselves be delivered for examination. These

provisions are reasonable, since a prior inspection will aid customs officials in determining subsequently what repairs were made and what their value was. [Emphasis quoted.]

Section 10.112 of the Customs Regulations refers by its terms to documents required to be filed *in connection with the entry*, whereas section 10.8(d) concerns a declaration and application to be filed *before the exportation of the merchandise*. Since the former does not refer to the same period of time as the latter, the two are unrelated and one cannot be construed as changing the time period of the other. The purpose of section 10.8(d) is to give customs officials notice of the proposed exportation and an opportunity to examine the article beforehand. Filing of the application long after the merchandise has been returned will not serve this end.

Plaintiff relies on *E. Dillingham, Inc. v. United States*, 67 Cust. Ct. 226, C.D. 4278 (1971), appealed on another point and modified 60 CCPA 39, C.A.D. 1078, 470 F. 2d 629 (1972). In that case the Customs Court held that failure to comply with section 10.8 of the Customs Regulations and the absence of a waiver precluded sustaining the claim for classification under item 806.20. In the course of the opinion the court quoted section 10.8(d), *supra*, and stated (p. 229):

There is a certificate of registration at the bottom of the application which must be signed by a customs official certifying that he has found the articles to be as described by the owner. Customs Regulation § 10.8(j).

A certificate of registration covering the fabric portion of the "needled" felts was never filed, nor was there any evidence as to why it was not filed.

The owner's declaration and the certificate could be filed after entry provided there is an affirmative showing by plaintiff that the *failure to file the document (Form 4455) was not due to willful negligence or fraudulent intent*. Customs Regulation § 10.112. [Emphasis quoted.]

There was no evidentiary showing that this document was entitled to the privilege of late filing.

The collector could waive compliance with registration requirements if he was satisfied the failure to comply was due to inadvertence, mistake or inexperience and not to negligence or bad faith. Customs Regulation § 10.8(k).

No evidence was offered which would make this regulation applicable. * * *

Section 10.8(j) provides:

There shall be filed in connection with the entry the certificate of registration (customs Form 4455) and a declaration made by the consignee, owner, or an agent having knowledge of the facts

that the articles entered in their repaired, altered, or processed condition are the same articles covered by the certificate of registration. * * *

It is evident that the certificate of registration and the declaration referred to in section 10.8(j) are different from the declaration and application referred to in section 10.8(d), although both may be on the same customs Form 4455. The former is the collector's endorsement showing the examination of the articles and their lading on the exporting conveyance. Section 10.8(g). Thus, where the court in *Dillingham* said that the owner's declaration and certificate might be filed after entry in view of Customs Regulation § 10.112, it was referring to the certificate of registration and declaration under section 10.8(j) and not the application required by section 10.8(d).

Therefore, there is no authority for the proposition that section 10.112 allows the late filing of documents required by section 10.8(d) to be filed before exportation. It is well settled that compliance with mandatory regulations is a condition precedent to recovery and the burden of proof thereof rests on plaintiff. *Socony Vacuum Oil Co., Inc. v. United States*, 44 CCPA 83, C.A.D. 641 (1957) and cases cited.

Plaintiff claims that the Government by its motion is seeking to deny plaintiff's basic right to seek judicial review of administrative action, citing *Suwannee Steamship Company v. United States*, 70 Cust. Ct. 327, C.R.D. 73-3, 354 F. Supp. 1361 (1973). This is untenable since plaintiff has admitted failure to comply with section 10.8(d) of the regulations and the court has reviewed the issue of law as to whether section 10.112 is applicable to the instant case.

I conclude that section 10.112, which permits documents required to be filed *in connection with the entry* to be produced later, is not applicable to section 10.8(d), which requires the filing of a declaration and application *before the exportation of an article* which will be claimed classifiable under item 806.20 or item 806.30.

Since plaintiff has failed to comply with regulations which are mandatory and a condition precedent to recovery, its claim for relief cannot be sustained. Defendant's motion for judgment on the pleadings is granted and the actions will be dismissed.

(C.D. 4516)

COST PLUS, INC. v. UNITED STATES

Tableware Sets

Court No. 60/33642

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 18, 1974)

*Glad & Tuttle (John McDougall of counsel) for the plaintiff.**Carlo A. Hills, Assistant Attorney General (James Caffentzis, trial attorney), for the defendant.*

RICHARDSON, Judge: The merchandise at bar, consisting of tableware sets, was classified in liquidation under items 651.75 and 650.49, TSUS, at the duty rate of 37.36 *per centum ad valorem*. It is claimed by the plaintiff-imported that the merchandise should be classified as sets under items 651.75 and 650.49, TSUS, at the duty rate of 0.9 cent each plus 15.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc. v. United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the tableware sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the

Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in the action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49, TSUS, as sets at the duty rate of 0.9 cent each plus 15.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4517)

HEYMAN HOUSEWARES, INC. v. UNITED STATES

Tableware sets

Court No. 68/62107

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 18, 1974)

Glad & Tuttle (John McDougall of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Coffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of tableware sets, was classified in liquidation under items 651.75 and 650.45, TSUS, at the duty rate of 32.5 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.45, TSUS, at the duty rate of 2 cents each plus 12.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc. v. United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.45, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the tableware sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in the action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.45, TSUS, as sets at the duty rate of 2 cents each plus 12.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4518)

INDUSTRIAL EXPORT CO. v. UNITED STATES

Stainless steel bar sets

Court No. 69/2045

Port of Portland, Oreg.

[Judgment for plaintiff.]

(Decided April 18, 1974)

Glad & Tuttle (John McDougall of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of stainless steel bar sets, was classified in liquidation under items 651.75 and 650.21, TSUS, at the duty rate of 25.19 *per centum ad valorem*. It is

claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc. v. United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.21, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the stainless steel bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in the action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4519)

THE MAY DEPARTMENT STORES v. UNITED STATES

Flatware sets

Court No. 69/16857

Port of Portland, Oreg.

[Judgment for plaintiff.]

(Decided April 18, 1974)

*Glad & Tuttle (John McDougall of counsel) for the plaintiff.**Carla A. Hills, Assistant Attorney General (James Caffentzis, trial attorney), for the defendant.*

RICHARDSON, Judge: The merchandise at bar, consisting of flatware sets, was classified in liquidation under items 651.75 and 650.08, TSUS, at the duty rate of 23.34 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.08, TSUS, at the duty rate of 1 cent each plus 12.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc. v. United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.08, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the flatware sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal

to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in the action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.08, TSUS, as sets at the duty rate of 1 cent each plus 12.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4520)

AMTHOR IMPORTS v. UNITED STATES

Salad server tongs sets

Court No. 65/16932

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 19, 1974)

Glad & Tuttle (John McDougall of counsel) for the plaintiff.

Carlo A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of salad server tongs sets, was classified in liquidation under items 651.75 and 927.53, TSUS, at the duty rate of 91.36 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as set under items 651.75 and 927.53, TSUS, at the duty rate of 3 cents each plus 67.5 *per centum ad valorem*.

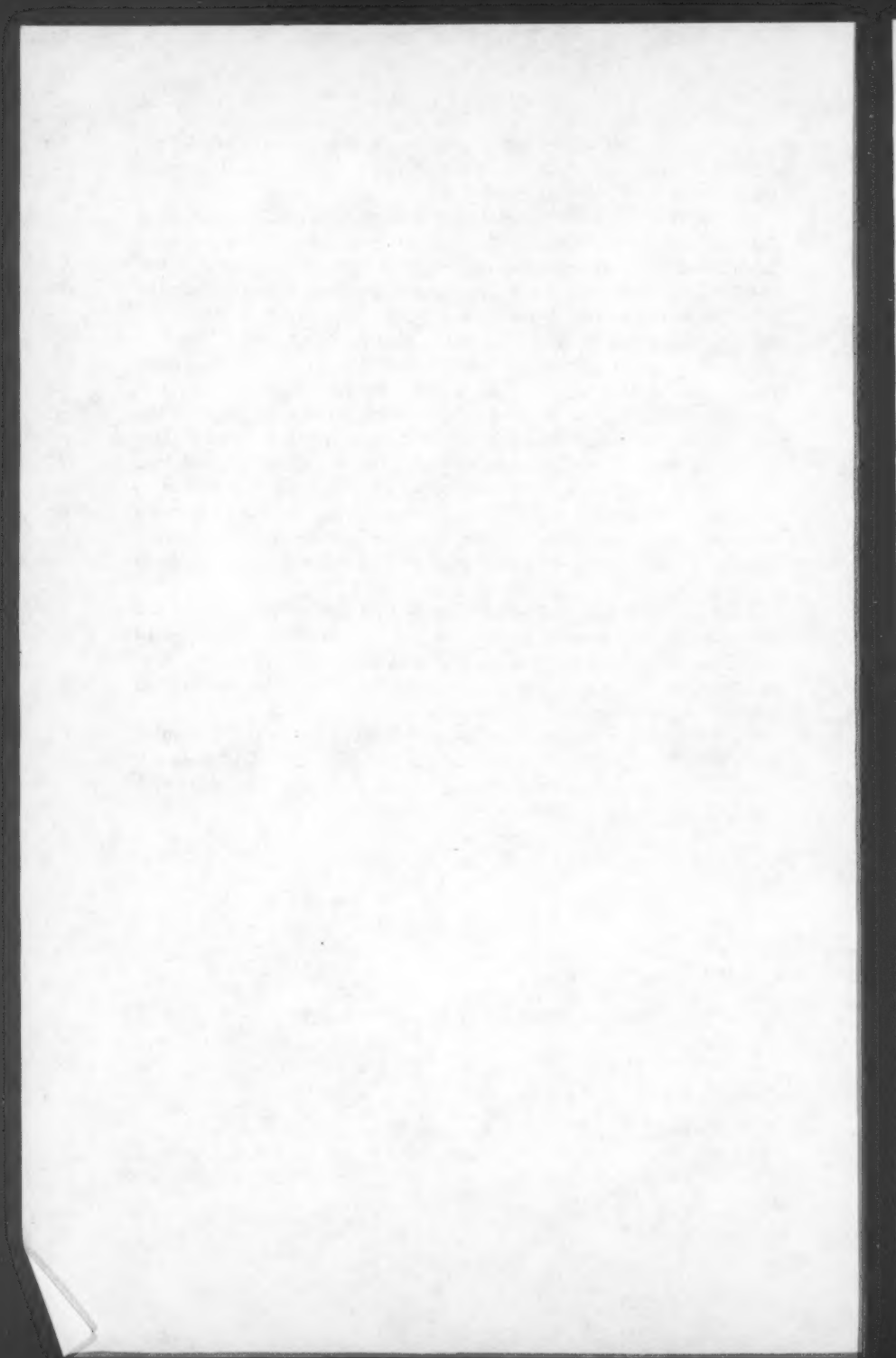
In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc. v. United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 927.53, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the

entry of judgment overruling the manner assessment of duty by the district director and sustaining plaintiff's claim as to the salad server tongs sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 927.53, TSUS, as sets at the duty rate of 3 cents each plus 67.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.



Decisions of the United States Customs Court

Abstracts Abstracted Protest Decisions

April 22, 1974.
April 22, 1974.

DEPARTMENT OF THE TREASURY, *April 22, 1974.*
The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and of others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/249	Ford, J. April 17, 1974	Oriental Exporters, Inc.	67/98866, etc.	Item 684.70 15%	Item 685.22 12.5%			Transamerican Electronics Corp. et al. v. U.S. (C.D. 4408)	New York Earphones imported with radios

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate		Par. or Item No. and Rate			
P74/280	Richardson, J. April 17, 1974	Baylis Brothers Co.	67/28020, etc.	Item 882.03 42.5%		Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values re- turned by customs offi- cial; entries returned to district direc- tor for pur- pose of de- termining value of fabric pieces		U.S. v. The Baylis Brothers Co. (C.A.D. 1028)	San Juan American goods returned; smocked dress fronts

F74/251	Richardson, J. April 17, 1974	Baylis Brothers C.	67/25068, etc.	Item 382.03 42.5%	Item 807.00 Upon full value of im- ported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate val- ues returned by customs official; en- tries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1028)	San Juan American goods returned; smocked dress fronts
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CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/232	Richardson, J. April 17, 1974	Baylis Brothers Co.	68/0083, etc.	Item 382.03 42.5% Item 382.00 41% or 39% Item 382.04 42.5%	Item 807.00 Upon full value of im- ported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate al- ues returned by customs office ; en- tries returned to district director for purpose of determining value of fabric pieces			U.S. v. The Baylis Brothers Co. (C.A.D. 1028)	San Juan American goods returned smocked dress fronts

F74/253	Richardson, J. April 17, 1974	Baylis Brothers Co.	68/40398, etc.	Item 382.00 38%, 39%, or 41% Item 382.04 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate val- ues returned by customs official; en- tries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1028)	San Juan American goods returned; smocked dress fronts
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CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par. or Item No. and Rate	HELD Par. or Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
P74/234	Richardson, J. April 17, 1974	Baylis Brothers Co.	68/63466, etc.	Item 382.00 41% or 36% Item 382.04 42.8%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate val- ues returned by customs official; en- tries returned to district director for purpose of determining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts

P74/255	Richardson, J. April 17, 1974	Baylis Brothers Co.	69/23316, etc.	Item 382.00 87% or 41% Item 382.04 42.5%	Item 807.00 Upon full value of imported article (smocked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values re- turned by customs offi- cial; entries returned to district direc- tor for pur- pose of deter- mining value of fabric pieces	U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smocked dress fronts
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CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Per. or Item No. and Rate	Per. or Item No. and Rate	Per. or Item No. and Rate	Per. or Item No. and Rate		
P74/266	Richardson, J. April 17, 1974	Baylis Brothers Co.	69/37354, etc.	Item 382.00 29% or 41% Item 382.04 42.55%	Item 807.00 Upon full value of imported article (smoked dress fronts) less cost or value of American components (fabric pieces of dress fronts); no separate values re- turned by customs offi- cial; entries returned to district direc- tor for pur- pose of deter- mining value of fabric pieces			U.S. v. The Baylis Brothers Co. (C.A.D. 1026)	San Juan American goods returned; smoked dress goods
P74/287	Maletz, J. April 17, 1974	American Rusch Corp.	70/56729	Item 664.70 or 709.15 23.5% or 25%	Item 664.80 0% or 5.5%			American Rusch Corp. v. U.S. (C.D. 4116)	New York Electric filament lamps (laryngoscope lamps) solely used with laryn- goscope blades

CUSTOMS COURT

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P74/253	Re, J. Apr 117, 1974	Venetianale Corp. of America	60/38254, etc.	Item 772.15 17%	Item 772.35 12.5%	Venetianale Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow cover
P74/259	Re, J. April 17, 1974	Thomas Joseph Welsh Forest Products	70/14832	Item 727.40 11.5%	Item 202.33 2%	Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	New Orleans Drawer slides and backs of lumber
P74/260	Richardson, J. April 19, 1974	Torch Manufacturing Co., Inc.	67/27493	Par. 353 35% (as entireties)	Separate values not returned; protest dismissed as premature; entry returned to district director for further administrative action	Summary judgment	Los Angeles Batteries and flashlights (separate entities)
P74/261	Maleiz, J. April 19, 1974	B. Jadov & Sons, Inc.	71-10-01538	Item 445.10 14% plus 1.9¢ per lb., and 15% plus 1.0¢ per lb.	Item 494.60 3%	Agreed statement of facts	New York Aron Alpha Adhesive
P74/262	Newman, J. April 19, 1974	World Famous Sales Co.	67/9740	Item 206.37 or 207.00 103%	Item 727.35 10.5%	The American Import Co. et al. v. U.S. (C.D. 3807)	Chicago Gunsacks
P74/263	Re, J. April 19, 1974	A & P Import Co., Inc.	71-9-01102	Item 772.15 15%	Item 772.35 11%	Venetianale Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/264	Re, J. April 19, 1974	Venetianale Corp. of America	72-4-00780	Item 772.15 11.5% or 10%	Item 772.35 8.5% or 7%	Venetianale Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers

Decisions of the United States Customs Court

Abstracts Abstracted Reappraisal Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/223	Maletz, J. April 17, 1974	Comel International Corp.	72-11-02463	Constructed value: Equal to landed cost of U.S. goods in Haiti plus costs reflected on commercial invoices for assembly and labor, general ex- penses and profit, plus cost of containers and packing	Not stated	Agreed statement of facts	San Juan Controls, resistors, circuit breakers and other electronic components
R74/224	Re, J. April 17, 1974	Frank P. Dow Co., Inc., et al.	R38/27745, etc.	Export value: Net appraised value less 7½%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood

R74/225	Re. J. April 17, 1974	W. R. Grace & Co. Pac. Coast Div.	298925-A, etc.	Export value: Net appraised value less 7½% net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R74/226	Re. J. April 17, 1974	United States Ply- wood Corp.	R58/21786, etc.	Export value: Net appraised value less 7½% net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/227	Maletz, J. April 18, 1974	Import-Export Cor- poration of Texas	71-8-00553	Export value: Invoiced unit values, net packed (entries 102161, 101009, 124103, 123605, 114233) (on plaintiff's motion for judgment on the pleadings)	Not stated (Defendant's motion to dismiss ac- tion in part granted; action dismissed as to entries 110690, 114209, 114646, 114812, 114814, 116285)	Order granting plain- tiff's motion for judg- ment on the pleadings Order granting defend- ant's motion to dis- miss in part	Houston Wigs and similar articles
R74/228	Maletz, J. April 19, 1974	RCA Corporation	72-1-00103	Constructed value	Unit values set forth in schedule attached to decision and judge- ment in column no. (4) which is headed "Unit Value for Each Article of Merchandise, Net Packed"	Judgment on the plead- ings	Los Angeles Radios, assembled in and exported from Taiwan together with earphones and batteries
R74/229	Re. J. April 19, 1974	C & S Sales Co. et al.	R64/2006, etc.	Export value: Net ap- praised value less 7½% net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood

Tariff Commission Notice

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, May 1, 1974.

The appended notice relating to investigations by the United States Tariff Commission is published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[337-L-71]

CERTAIN EYE TESTING INSTRUMENTS INCORPORATING
REFRACTIVE PRINCIPLES

Notice of Extension of Time for Submission of Information

Notice is hereby given that the date for submission of information by interested persons which is pertinent to the preliminary inquiry instituted in the above matter has been extended from April 26, 1974 to June 26, 1974.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued April 26, 1974.

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